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IN THE

Supreme Court of the United States

October Term, 1946

No. 512

JAMES G. RALEY, AND THOMAS E. RALEY, TRADING AS RALEY'S FOOD STORE
Petitioners,

vs.

PAUL A. PORTER, ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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To the Honorable, Chief Justice, and the Associate Justices of the Supreme Court of the United States.

The petitioners, and the appellants below, pray that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the District of Columbia entered in the above cause on June 17, 1946 (R. 19).

OPINIONS BELOW

The District Court of the United States for the District of Columbia did not render an opinion in this cause. The opinion of the United States Court of Appeals for the District of Columbia is set forth on pages 16, 17, and 18 of the record.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on June 17, 1946 (R. 19). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

This case involved two questions. First, whether the Administrator of the Office of Price Administration may lawfully delegate his power to issue subpoenas to a District Director of the Office of Price Administration under the Emergency Price Control Act of 1942, as amended. Second, whether the subpoena issued was too broad and sweeping as to be invalid and to constitute in law an unreasonable search and seizure within the meaning of the Fourth and Fifth Amendments to the Constitution of the United States.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes are hereinafter discussed in the argument, and are also set out fully in the Appendix to this argument and brief.

STATEMENT OF THE FACTS

The petitioners are engaged in the retail grocery and provision business in the District of Columbia, trading under the firm name and style of Raley's Food Store. The respondent is the Administrator of the Office of Price Administration. On August 2, 1945, the petitioners were served with a subpoena duces tecum signed by Robert K. Thompson, District Manager, of the Office of Price Administration, requiring the petitioners to appear before one F. L. Williamson, Enforcement Attorney, of the Office of Price Administration on August 6, 1945, at 10 o'clock A.M. and bring with them "all books, records and sales slips showing sales of commodities subject to price control between January 1, 1945, and the date of this subpoena." (R. 5). The record shows that at the time and place specified in the subpoena, the petitioners appeared by counsel and objected to the subpoena and fully apprised the local Office of Price Administration of their reasons and grounds for not complying with such subpoena. (R. 8). The grounds are set forth at length on page 9 of the Joint Appendix.

The official of the local Office of Price Administration before whom the subpoena was returnable refused to consider the grounds of petitioners' objections to the subpoena duces tecum, and the local Office of Price Administration subsequently filed an application in the District Court of the United States for the District of Columbia in the name of Chester Bowles, Administrator of the Office of Price Administration, for an order to compel the petitioners to

comply with the above-mentioned subpoena duces tecum, (R. 1-2-3-4). The application for such an order was signed by Carl W. Berueffy, District Enforcement Attorney and F. L. Williamson, Assistant Enforcement Attorney. None of the papers filed in connection with the application described above was signed by Chester Bowles, Administrator of the Office of Price Administration.

The petitioners duly filed their answer to the foregoing application. (R. 7-8-9). The answer alleged among other things that the petitioners had not responded to the subpoena originally for reasons stated, that the subpoena was invalid in that it was not signed by any person authorized by law to sign and issue such a subpoena, that the subpoena did not designate any specific documents, papers, or records, that the subpoena was too broad and sweeping and was not coextensive with the protection afforded by the Fourth and Fifth Amendments to the Constitution of the United States, that the subpoena was unreasonable, oppressive, confiscatory, and invalid, and that the subpoena was void on other grounds stated in the answer. (R. 8-9).

The affidavit of James G. Raley (R. 10-11) sets forth the fact that if the petitioners were to produce the records called for by this blanket subpoena, which records constituted their entire working records, they could not conduct their business, that the bulk of such records consisted of thousands of charge slips of several hundred customers and represented thousands of dollars owed the petitioners of which these slips were their only evidence of indebtedness. The affidavit mentioned above further stated that the loose sales slips could not be duplicated and if lost or misplaced would result in irreparable damage and great financial loss to the petitioners, that the petitioners could not comply with the blanket subpoena and continue to properly conduct their business, and that the petitioners had never violated any of the regulations of the Office of

Price Administration and had otherwise complied with the law regulating prices.

The statement of counsel for the respondent at the time of the hearing on the application for an order to compel compliance with the aforesaid subpoena is important to the determination of the questions arising on this appeal. (R. 12). It shows that the District officers of the Office of Price Administration had before them no evidence whatsoever that the petitioners had violated any law or regulation relating to price control or that such officials had any reason to believe that such was the case, but that on the contrary the demand made by the subpoena in question was merely a "fishing expedition" and was based purely on vague suspicion, if anything. In fact the record shows this by the following colloquy. (R. 12). Mr. Flaherty. "I would suggest this, that if they want to look at any particular accounts, let them give the names of the customers or the accounts, and we would be glad to give that to them." The Court. "I don't know that they know which ones they want. It is a fishing expedition, I suppose; but I suppose to some extent fishing expeditions under the OPA have been given sanction." The court subsequently inquired of counsel for the respondent as follows. (R. 12). The Court. "Is your office in a position to do any selection at all, Mr. Walker?" Mr. Walker. "No, your Honor."

The court below granted the application of the respondent and ordered the petitioners to appear on November 27, 1945 at 10 o'clock, A.M. and produce records as directed in the before-mentioned subpoena. For the information of this Court, a subsequent order was duly entered by the District Court staying the aforesaid order for compliance pending the final disposition of the instant appeal.

The United States Court of Appeals for the District of Columbia affirmed the judgment of the District Court.

SPECIFICATIONS OF THE ERRORS TO BE URGED

That the United States Court of Appeals for the District of Columbia erred in its ruling that the Administrator of the Office of Price Administration had authority to delegate his power to issue subpoena, and that the Court further erred in holding that the subpoena was not void because it was too broad and sweeping and as such constituted an unreasonable search and seizure under the Fourth and Fifth Amendments to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

The petitioners assert that a writ of certiorari should be granted in this cause under subdivision 5 of Rule 38 of this Honorable Court because the United States Court of Appeals for the District of Columbia has rendered a decision in conflict with the decision of the United States Circuit Court of Appeals for the Sixth Circuit on the same matter; that is to say that the United States Court of Appeals for the District of Columbia has held in its opinion in this cause that the Administrator of the Office of Price Administration has full power and authority to delegate the power to issue subpoenas, while the United States Circuit Court of Appeals for the Sixth Circuit in the case of Paul Porter, Price Administrator v Mohawk Wrecking & Lumber Company, a partnership, and Harry Smith, decided August 12, 1946, expressly contradicted the opinion in the instant case and held upon consideration of the same statutes and regulations involved here that no such authority to delegate the power to issue subpoena existed. It is further asserted that the decision of the United States Court of Appeals in the instant cause is in conflict with the applicable decisions of this Honorable Court namely, the case of *Cudhay Packing Company v. Holland* 315 U.S. 357, and that this Court in the exercise

of its supervision over the immediate Courts of Appeals should finally determine the questions of law involved in order to have uniformity of decisions throughout the United States. The decision of the United States Court of Appeals in the instant cause is also in conflict with the decisions of this Honorable Court relating to the broad and sweeping provisions of the subpoena, and the right to go on "fishing expeditions" all of which decisions will be mentioned in the argument and brief filed with this petition. The writ should be granted on both grounds set forth in the petition for the reasons herein stated.

ARGUMENT AND BRIEF

I. The applicable language of the Emergency Price Control Act is virtually identical with that of the act construed by the Supreme Court in Cudahy Packing Co. v. Holland as prohibiting delegation of the subpoena power by the Administrator.

In *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, 62 S.Ct. 651, 86 L.Ed. 895, the Supreme Court, in construing applicable sections of the Fair Labor Standards Act (29 U.S.C.A. secs. 204(a), (b), (c), 208(f), and 209) with interrelated parts of the Federal Trade Commission Act (15 U.S.C.A. secs. 41, 42, 43, and 49) incorporated by reference therein, determined that the Administrator of the Wage and Hour Division could not lawfully delegate the power of subpoena conferred on him by the first-mentioned act. This precise question, arising from cognate provisions of the Emergency Price Control Act (50 War Appendix U.S.C.A. secs. 921(a), (b), (d), and 922(b)), is in issue in the instant case, in which the United States Court of Appeals for the District of Columbia held adversely to the petitioners that the Administrator of the Office of Price Administration may delegate the subpoena power under the last-mentioned act, which decision, however, was

expressly repudiated by the United States Circuit Court of Appeals for the Sixth Circuit in *Porter* v. *Mohawk Wrecking & Lumber Co.*, ... F.2d ....., (decided Aug. 12, 1946). For convenience of reference and comparison the statutory provisions mentioned above are shown in a parallel table in the Appendix to this brief.

A comparison of the applicable sections of each of the aforesaid acts, as shown in the Appendix herein, shows beyond question that the respective statutes in respect to the subpoena power are essentially the same. Thus, in *Porter* v. *Mohawk Wrecking & Lumber Co., supra*, the court said at pg. 8 of the opinion:

> "... that the Supreme Court in the *Cudahy* case had before it the same language and the same question [as in the instant case under the Emergency Price Control Act] and held that the statutory authority to delegate 'his functions and duties' under the Act did not include the authority [of the Administrator] to delegate the subpoena power."

In the report of the hearing before the Committee of the House of Representatives to Investigate Executive Agencies, held June 22, 1944, Mr. Aaron L. Ford, General Counsel to the Committee, stated that the exact language of the Emergency Price Control Act appeared in the parts of the Fair Labor Standards Act upon which the Supreme Court based its decision in the *Cudahy* case. In 2 Pike & Fisher Administrative Law, Current Text, p. 44 C 16-5, it is also said, "The Emergency Price Control Act of 1942 falls squarely within the rule of the *Cudahy* case." Accord, In the matter of Wm. J. Shields, et al., memorandum opinion by Beaumont, J., (U.S. Dist. Judge, So. Dist. Calif.), May 4, 1946, ... F.Supp. .....

An open-minded perusal of the related statutes described above should convince even a layman that they are one in substance and intent, and are as well almost identical in words and form. Accordingly, where a statute, such as

the Fair Labor Standards Act, has been construed by the court of last resort, as in *Cudahy Packing Co.* v. *Holland*, *supra*, and a similar or cognate statute, such as the Emergency Price Control Act as here involved, is subsequently reenacted in the same or substantially the same terms, it is presumed that Congress in so doing was familiar with such judicial construction and adopted the same as a part of the law. *Heald* v. *District of Colmubia*, 254 U.S. 20, 41 S.Ct. 42, 65 L.Ed. 106; *Bruce* v. *Tobin*, 245 U.S. 18, 38 S.Ct. 7, 62 L.Ed. 123; *U.S.* v. *Carecedo Hermanos Y Compania*, 209 U.S. 337, 28 S.Ct. 532, 52 L.Ed. 821; *Latimer* v. *U.S.*, 223 U.S. 501, 32 S.Ct. 242, 56 L.Ed. 526; *Johnson* v. *Manhattan Ry. Co.*, 289 U.S. 479, 53 S.Ct. 721, 77 L.Ed. 1331.

In *Porter* v. *Mohawk Wrecking & Lumber Co.*, *supra*, the court said in this regard:

> "As pointed out above, shortly after the enactment of the Price Control Act the Supreme Court in the *Cuddhy* case construed unfavorably to the Administrator's contention the statutory language now under consideration. With that interpretation *definitely* before it, Congress subsequently reenacted the Act of June 30, 1944 and June 30, 1945 without attempting to amend the language so as to give it a different meaning and effect." (Italics supplied).

II. The rule laid down by the Supreme Court in Cudahy Packing Co. v. Holland to the effect that the power to subpoena may not be delegated without express statutory authority is applicable to the instant case, and the Court of Appeals erred in not recognizing this principle.

Prescinding from and disregarding momentarily the concept of identity of language of the subpoena provisions in the Emergency Price Control Act and the Fair Labor Standards Act as construed by the Supreme Court in *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, 62 S.Ct. 651, 86 L.Ed. 895, which was discussed in the preceding para-

graphs herein, this Court in the *Cudahy* case laid down the broad principle of administrative law that a head of an administrative agency may not delegate the subpoena power conferred on him by statute, unless he is expressly so authorized by such act. Regardless of any slight variance in the form of wording of the respective statutes, otherwise similar in substance, the principle as enunciated by the Supreme Court denying the right of the Administrator to delegate the power of subpoena without express statutory authorization is unquestionably applicable in the case at hand.

In the *Cudahy Packing Company* case, the Supreme Court, speaking through the late Chief Justice Stone, stated the rule as follows:

> "The entire history of the legislation controlling the use of subpoenas by Administrative Officers indicates a Congressional purpose not to authorize by implication the delegation of the subpoena power."

Speaking in similar vein, the Court restated and reaffirmed the rule in the same case (*Cudahy* case, 315 U.S. 357, 364) in the following words:

> "All this is persuasive of a Congressional purpose that the subpoena power shall be delegable only when an authority to delegate is expressly granted."

See also, *National Labor Relations Board* v. *Barrett Co.*, (1941, CCA 7), 120 F.2d 583, 586.

In deciding the petitioners' case below, the Court of Appeals failed to recognize this fundamental principle. That there is no express provision for delegation of the subpoena power in the Emergency Price Control Act is readily apparent from even a cursory examination of the applicable sections of the act, as will be discussed more fully hereinafter. On the contrary, the plain intent of Congress as expressed in such act is to positively inhibit such delegation, as will be clearly demonstrated herein

below in the discussion in this connection of sections 922(b) and 922a of Title 50 War Appendix U.S.C.A. In deciding the question of authority to delegate the subpoena power, the Sixth Circuit Court of Appeals, in *Porter* v. *Mohawk Wrecking & Lumber Co.*, ... F.2d ....., decided Aug. 12, 1946, at pg. 9 of the opinion, held that the rule in the *Cudahy* case applied to the Emergency Price Control Act as a general principle of law laid down by our highest Court, and flatly stated that the United States Court of Appeals for the District of Columbia in the instant case had failed to grasp the point of the Supreme Court's decision in the *Cudahy* case. In *Porter* v. *Mohawk Wrecking & Lumber Co., supra,* the court said in this regard:

> "The Administrator [of the Office of Price Administration] refers us to the four following opinions of different Circuit Courts of Appeals, all involving the same issue as is now presented to us and sustaining his contentions: *Pinkus and Segal* v. *Porter,* decided May 2, 1946, 155 Fed. (2d) 90, 7th Circuit; *Raley* v. *Porter,* decided June 17, 1946, ... Fed. (2d) ..... U.S. Circuit Court of Appeals District of Columbia; *Porter* v. *Gantner & Mattern Company,* decided June 24, 1946 ..... Fed. (2d) ....., 9th Circuit; *Porter* v. *Murray,* decided June 28, 1946, ... Fed. (2d) ....., 1st Circuit. We recognize the weight of those opinions. It is sufficient to say here that they hold that the decision of the Supreme Court in the *Cudahy Packing Company* case is not controlling due to the differentiating features involved in the Emergency Price Control Act, as contended for by the Administrator and as pointed out hereinabove. In our view that the ruling in the *Cudahy Packing Company* case does control the present situation, we necessarily have to disagree. We fail to find in any of the four opinions referred to any real recognition of the broad rule of administrative law pronounced by the opinion in that case, namely, that the subpoena power conferred by legislation upon the head of an administrative agency is delegable by him 'only when an authority to delegate is expressly

granted.' As stated above, we believe that fundamental rule controls our decision in the present case."

So also, in 2 Pike & Fisher Administrative Law, Current Text, p. 44 C 16-5, it is stated:

> "The Emergency Price Control Act of 1942 falls squarely within the rule of the *Cudahy* case."

The dominant reason for the rule as expressed by the Supreme Court in the *Cudahy* case (315 U.S. 357, 363-364) is that such unlimited authority of an administrative officer to delegate the power of subpoena "is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer." Hence, there is an impelling reason for granting such drastic power to subpoena "only to the responsible head of the agency."

III. The provisions of the Emergency Price Control Act regarding subpoenas and subsequent amendment thereof express in unmistakable terms that the subpoena power is reposed in the Administrator solely.

The provisions of the Emergency Price Control Act pertaining to subpoenas which are involved herein are contained in 50 U.S.C.A. War Appendix, sec. 922(b), Jan. 30, 1942, c. 26 Title II, sec. 202, 56 Stat. 30, as amended June 30, 1944, c. 325, Title I, sec. 105, 58 Stat. 637, and read as follows:

> "§922 (b). The Administrator is further authorized, *by regulation or order*, to require any person who is engaged in the business of dealing with any commodity or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-

area accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place." (Italics supplied).

It was seen hereinabove that under the rule of *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, 62 S.Ct. 651, 86 L.Ed. 895, the subpoena power conferred by statute upon an administrative officer may not be delegated by him without express authority to do so prescribed by the statute. In the instant case, the applicable statutory provisions for issuing subpoenas, quoted above, not only do not authorize the Administrator of the Office of Price Administration either expressly or by inference to delegate such subpoena power, but that section (50 U.S.C.A. War App. sec. 922(b)) on the contrary limits the power of subpoena by necessary implication to the Administrator exclusively.

Section 922(b), above, may be said to consist of two parts, consisting of two sentences, the first of which provides in effect for conducting hearings and investigations, and the like, under the act, while the second part or sentence provides for the subpoena power under the act. It will be observed that in the first part or sentence of section 922(b), the Administrator is authorized to conduct hearings, investigations, and the like, and that he is further expressly authorized therein to delegate this power of investigation and the like by the inclusion in the grant of such power of the phrase "by regulation or order." This is admittedly an express authorization to delegate the power of investigation and inquiry, as this part of section 922(b) specifies the only practicable method of delegation, namely, by means of regulations or orders.

The second part or sentence of section 922(b) confers the power of subpoena on the Administator only, and does not contain any words or provisions whatsoever for del-

egation of the subpoena power, as does the first part or sentence of section 922(b) with respect to investigations. In the construction of a section of a statute, such as section 922(b), above, the section must be read as a whole and its intent gathered from all its provisions. *Herder v. Helvering*, 70 App. D. C. 287, 106 F 2d 153, cert. den. 308 U.S. 617, 60 S.Ct. 262, 84 L.Ed. 515, rehearing den. 308 U.S. 639, 60 S.Ct. 377, 84 L.Ed. 530; *Garfield v. U. S. ex rel. Goldsby*, 30 App. D. C. 177, affirmed, 211 U.S. 249, 29 S.Ct. 62, 53 L.Ed. 168.

If Congress intended to allow delegation of the subpoena power, it would not have differentiated between the two powers in the same section, by expressly allowing delegation of investigation powers but not including subpoena powers.

Nothing could be clearer than the expression of the language of section 922(b), quoted above, definitely authorizing the Administrator to delegate the investigatory powers but conferring the subpoena power exclusively on the Administrator without power to delegate. In the *Cudahy* case (315 U.S. 357), the Supreme Court in just such a situation declared that the meaning of such statutory provisions is perfectly plain and that in short it precludes the delegation of the subpoena power by the Administrator. In giving effect to the rule, the Supreme Court (*Cudahy* case, 315 U.S. 357) said at pg. 364:

> "Because of these differences it seems to us fairly inferable that the grant of authority to delegate the power of inspection and the omission of authority to delegate the subpoena power show a legislative intention to withhold the latter. Moreover, if a subpoena power in the regional directors were to be implied from their delegated authority to investigate, we should have to say that Congress had no occasion expressly to grant the subpoena power to the Administrator, who also has the power to investigate, and that this grant to him was superfluous and without meaning or purpose."

The primary rule of statutory construction is that the intent of the Legislature is to be found in the language it has used, and where that language is clear, as in the case of section 922(b), above, it is not for the court to say that the section (e.g. sec. 922(b)) shall be construed to embrace a grant of authority (such as to delegate subpoena power) not specificially included in the statute. In other words, the court cannot supply omissions in legislation, especially in the case of section 922(b) in view of the *Cudahy* decision, nor afford relief because omissions exist. *U.S.* v. *Union Pac. R. Co.*, 91 U.S. 72, 23 L.Ed. 224; *Ohio Nat'l Bank* v. *Berlin*, 26 App.D.C. 218; see also, *Cudahy Packing Co.* v. *Holland*, *loc. cit. supra.*

To further quote from *Cudahy Packing Co.* v. *Holland*, *supra*:

> "The construction of the Act which would thus permit the Administrator to delegate all his duties, including those involving administrative judgment and discretion which the act has in terms given only to him, can hardly be accepted unless plainly required by its words."

The fact that Congress intended to restrict the subpoena power to the Administrator under the Emergency Price Control Act is further indicated by the passage of an amendment to the original act of January 30, 1942. This amendment was included in the Second Deficiency Appropriation Bill of June 30, 1944, but was repeated in the Price Control Act of July 5, 1945. It now comprises 50 U.S.C.A. War Appendix, sec. 922a (Note: this section is not to be confused with 50 U.S.C.A. War App. sec. 922(a)), and reads as follows:

> "Any employee of the Office of Price Administration is authorized and empowered, when designated for the purpose by the head of the agency, to administer to or take from any person an oath, affirmation, or affidavit when such instrument is required in connection with the performance of the functions or activities of said office."

The respondent no doubt will protest that this was done to permit clerks employed in ration boards to take oaths in the manner of notaries public in connection with OPA activities. If the Administrator has the implied authority to delegate the puissant power of subpoena under the Price Control Act as the respondent contends, why was it necessary to amend the act to permit his subordinates to perform relatively insignificant acts of oath taking. It is, therefore, difficult to see how the respondent can bona fide maintain that the Administrator has the implied authority to delegate the subpoena power which is so cautiously conferred by the legislature and so jealously protected from unauthorized delegation by inference by the courts, when the respondent is confronted by the admission of the Office of Price Administration that the above amendment was procured by that office for the purpose of authorizing its clerks to take oaths, notwithstanding that the Administrator is empowered to administer oaths and affirmations under the act.

Surely, if the Office of Price Administration considered it necessary to amend the act to permit clerks to administer oaths as representatives of the Administrator, it must have known that it was necessary to a far greater extent to obtain an amendment to authorize the Administrator's representaives to issue subpoenas.

In this connection the following excerpts from the report of the testimony of Fleming James, Jr., Director of Litigation, OPA, at a hearing on June 22, 1944 before the House of Representatives Committee to Investigate Executive Agencies is of concern:

> 'Rep. Hartley: ". . . We have just finished a consideration of the Price Control Act extension. Hearings were held before the Banking and Currency Committee. Don't you think you would have been on much more solid ground and would have had far greater legal authority had you come before the Banking and

Currency Committee and suggested that this being necessary [i.e. an amendment authorizing delegation of subpoena power], you would like to have had it written into the extension of price control?"

'Mr. James: "I think this is true, sir: That there would be no doubt at all if Congress specifically gave that delegation as a result of that."'

IV. The legislative history should not have been adverted to by the Court of Appeals since the provisions of the Act in question are not ambiguous, and are not uncertain in view of the Cudahy decision; and furthermore the legislative history if anything supports the petitioners contention rather than the respondent's.

A legislative construction of a statute can be invoked only where the statute is ambiguous or doubtful. *Caminetti* v. *U.S.*, 242 U.S. 470, 37 S.Ct. 102, 61 L.Ed. 442, LRA 1917F 502, Ann. Cas. 1917 B 1168. The provisions of the statute relating to subpoenas involved in the instant case are neither ambiguous nor doubtful, as the words and meaning of the applicable sections are plain and their import is clear, especially in view of the decision in the *Cudahy* case. Much has been made of and probably will be made of the so-called "legislative history" by the respondent in this case. There is reason to believe that the court below was not fully advised as to the full context and import of the so-called "legislative history" submitted by the respondent. Notwithstanding, the true legislative history of the Act supports the petitioners' case and is in fact against that of the respondent.

Thus, the report of the session of the House Committee To Investigate Executive Agencies on June 22, 1944, in which the Director of Litigation of OPA testified, is replete with statements showing that Members of Congress were familiar with the effect of the *Cudahy* case on the

Price Control Act and felt that Congress was bound by the decision of the Supreme Court therein with respect to reenactment of that Act. At that hearing it was developed that the Office of Price Administration had for a period of more than two years complied with the ruling in the *Cudahy* case, but had subsequently disregarded that practice merely for purposes of expediency. See, *ad hoc*, pg. 7 of the opinion in *Porter* v. *Mohawk Wrecking & Lumber Co.*, (CCA 6), ... F.2d ....., (decided Aug. 12, 1946).

The following quotation from House Report 862, 78th Cong., 1st Sess., 2nd Intermediate Report pursuant to H. Res. 102, Page 16, is typical of the temper and attitude of Congress with respect to the OPA's disregard for legal forms and its abuse of statutory authority, including unlawful delegation of the subpoena powers:

> "The committee finds that the OPA has assumed unauthorized powers to delegate by regulation and has by misinterpretation of Acts of Congress set up a nationwide system of judicial tribunals through which this executive agency judges the actions of American citizens relative to its regulations and orders and imposes drastic and unconstitutional penalties upon those citizens, depriving them in certain instances of vital rights and liberties without due process of law.
>
> "The exercise of extraordinary executive powers in wartime when those powers are duly granted by the legislature is one thing. The assumption of such powers by executive agencies without any such grant by the legislature is quite another."

The dissenting opinion in *Cudahy Packing Co.* v. *Holland, supra,* concedes that the legislative history is not there controlling. *Porter* v. *Mohawk Wrecking & Lumber Co., supra. Ergo,* it is not pertinent in the instant case since the Price Control Act and the *Cudahy* decision which governs it with respect to subpoena delegation are not ambiguous or subject of doubt. The fragment of the Senate Committee report seized upon by the respondent in

the case below and dwelt upon in *Pinkus and Segal* v. *Porter*, (CCA 7), 155 F.2d 90, is of no significance, and is disposed of quite handily by the court in *Porter* v. *Mohawk Wrecking & Lumber Co., supra*, at pg. 6 of the opinion, as follows:

> "The report of the Senate Committee on Banking and Currency in reporting out the Price Control Bill is entitled to consideration, but in view of the general language used therein and the fact that it is the report of only one of the two houses of Congress makes it merely one element to be considered among several and certainly not controlling. The report largely paraphrases §§201(a) and 201 (b) of the Act, refers to the "powers" of the Administrator only generally, and, as is the case in the wording of the Act itself, makes no specific mention of the subpoena power. In any event, the view of the Senate Committee as to the legal effect of the words used in the Act is directly contrary to the later view of the Supreme Court in the *Cudahy* case. The construction placed upon those words by the Supreme Court came only a few weeks after the enactment of the Emergency Price Control Act. Yet in the several reenactments of the Act in subsequent years, neither the Senate Committee on Banking and Currency nor Congress itself added anything to the statute to show that Congress, in passing the Act, had in mind an interpretation different from that given by the Supreme Court."

In this connection, it is established that in such matters, the courts are the final arbiters as to the proper construction of statutes, *U.S.* v. *Stafoff*, 260 U.S. 477, 43 S.Ct. 197, 67 L.Ed. 358. There is no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. *U.S.* v. *American Trucking Ass'ns*, 310 U.S. 534, 543; *Helvering* v. *Hammel*, 311 U.S. 504, 510-511; *Browder* v. *U.S.*, 312 U.S. 335, 338; *Addison* v. *Holly Hill Co.*, 322 U.S. 607, 617-618. The Congress enacted the Price Control Act having subpoena provisions similar to those in the Fair Labor

Standards Act, (in fact, the former seems to have been patterned on and in most respects copied from the latter, as the parallel table of these acts in the Appendix herein discloses), and having in mind the rule implied in the split decision in *Holland* v. *Lowell Sun Co.*, 315 U.S. 784, 62 S.Ct. 793, 86 L.Ed. 1190 (affirming without opinion, *Lowell Sun Co.* v. *Fleming*, (CCA 1), 120 F.2d 213, 216), and later confirmed in *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, 62 S.Ct. 651, 86 L.Ed. 895, acquiesced in the Supreme Court's decision by reenacting the Emergency Price Control Act several times since without altering the prohibition against delegation of the subpoena power under that act. Indeed, Congress has subsequently amended the Act in such a manner as to strengthen the rule in the *Cudahy* case as respects the last mentioned act, as was shown hereinbefore.

V. The Court of Appeals also erred in not holding that the subpoena duces tecum was so broad and sweeping as to constitute an unreasonable search and seizure within the meaning of the Fourth and Fifth Amendments.

The Fourth Amendment to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The subpoena duces tecum of the District Director of the Office of Price Administration, which is the subject of this petition, directed the appellants to produce "the following documents: All books, records and sales slips showing sales of commodities subject to price control be

tween January 1, 1945, and the date of this subpoena [August 2, 1945]." (R. 5).

Assuming *arguendo* that the subpoena signed and issued by the District Director instead of the Administrator is valid on its face, the subpoena is nevertheless contrary to the guarantee against unreasonable search and seizure of the Fourth and Fifth Amendments to the Constitution of the United States, because it is a blanket subpoena (R. 12) indiscriminately demanding in effect the production of petitioners' entire business records (R. 10-11). The respondent's attorneys admitted in open court that they were unable to specify any records in the subpoena and that there was no evidence of violations on which to base the subpoena (R. 12). "A general subpoena of this description is equally indefensible as a search warrant would be if couched in similar terms." *Hale* v. *Hinkle*, 201 U.S. 43, 77, 26 S.Ct. 370 50 L.Ed. 652, 666. Subpoenas less sweeping than the one involved herein have been sharply condemned by the Supreme Court in *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298, 44 S.Ct. 336, 68 L.Ed. 700, 32 A.L.R. 786; *Hale* v. *Hinkle, supra*, and many others.

Mr. Justice Holmes, speaking for the Supreme Court in *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298, 305, 44 S.Ct. 336, 68 L.Ed. 700, 32 A.L.R. 786, said:

> "Anyone who respects the spirit as well as the letter of the 4th Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447, 479, 38 L.Ed. 1047, 1058, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce

us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause, are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. The unwillingness of this court to sustain such a claim is shown in *Harriman* v. *Interstate Commerce Commission,* 211 U.S. 407, 53 L.Ed. 253, 29 Sup. Ct. Rep. 115; and as to correspondence, even in the case of a common carrier, in *United States* v. *Louisville & N. R. Co.,* 236 U.S. 318, 335, 59 L.Ed. 598, 606, P. U. R. 1915B, 247, 35 Sup. Ct. Rep. 363. * * *."

The petitioners, or anybody else in a similar position, are entitled to protection against indiscriminate use of blanket subpoenas of administration agencies. If this subpoena is upheld, petitioners would be at the mercy of petty officials and employees of the OPA who could if so minded harass and persecute the petitioners and others ceaselessly and maliciously at will. This is what petitioners would guard against by invoking the protection of their Constitutional rights and privileges.

This is no fanciful objection, as the following excerpt will show. House Report 862, 78th Cong., 1st Sess., 2nd Intermediate Report pursuant to H. Res. 102, Page 16, states:

> "The OPA maintains a small army of enforcement attorneys, inspectors and investigators. Some of the methods used by this police force not only contravene statutory safeguards of private rights but even invade the field of immunity guaranteed by the Constitution against unlawful searches and seizures."

CONCLUSION

Wherefore, Petitioners pray that a writ of Certiorari may issue under the seal of this Honorable Court in this Cause directed to the United States Court of Appeals for the District of Columbia, and upon such review the judgment of said Court of Appeals for the District of Columbia be vacated, reversed, and set aside, and that this case be remanded to said Court with instructions to proceed further in accordance with the views of this Court.

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APPENDIX

Statutes Involved In Argument

Sections are numbered as in U.S.C.A.

Emergency Price Control Act Title 50, War Appendix-U.S.C.A.

Sec. 921 (a). There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator. * * * * * The Administrator may, subject to the civil service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act. * * * * * The Administrator may utilize the services of Federal, State and Local agencies, and utilize such voluntary and uncompensated

Fair Labor Standards Act Title 29, U.S.C.A.

Sec. 204(a). "There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division. * * * * * .

(b). The Administrator may, subject to the civil service laws appoint such employees as he deems necessary to carry out his functions and duties under this chapter * * * * *. The Administrator may estab-

Federal Trade Commission Act Title 15, U.S.C.A.

Sec. 41. "A Commission is created and established to be known as the Federal Trade Commission, etc. * * * * *

Sec. 42. The Commission * * * * * shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties, etc. * * * * *"

services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court.

(b). The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. • • • • •

(d) The Administrator may, from time to time, issue such regulations and orders as he

lish and utilize such regional, local or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation. • • • • •

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

Sec. 208—U.S.C.A. Par. (f) "Orders issued under this section • • • • • shall contain such

Sec. 43. The principal office of the Commission shall be in the City of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or *by such examiners as it may designate,* prosecute any inquiry necessary to its duties in any part of the United States.

may deem necessary or proper in order to carry out the purposes and provisions of this Act.

terms and conditions as the Administrator finds necessary to carry out, the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein."

Sec. 922 (b). "The Administrator may adminster oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place." * * * * *

(e) "In case of contumacy by or refusal to obey a subpoena served upon, any person referred to in subsection (è) the district in which such person

Sec. 209. "For the purpose of any hearing or investigation provided for in sections 201-219 of this title, the provisions of Sections 49 and 50 of Title 15, * * * * * are hereby made applicable to the jurisdiction, powers and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees."

Sec. 49. "The Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners may administer oaths, etc." * * * * *

"And in case of disobedience to a subpoena the Commission may invoke the aid of any

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is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof."

court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence."

"Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, etc. * * * * * and any failure to obey such order of the court may be punished by such court as a contempt thereof."

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